

Air Quality Advisory Council

October 21, 2020 continued → November 12, 2020

- The Chair will call the Meeting to order at approximately 9:00 am.
- Please note that public comments will only be accepted at the appropriate time. Please use the “Raise hand” feature to notify the Host of your intent to provide a public comment.
- Additional participation instructions can be found at the meeting link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNTA=>

Public Meeting Connection Issues

- If you lose connectivity, please try to reconnect and rejoin the meeting in progress.
- You may also call from your landline or cell phone 1-346-248-7799 to join the meeting with audio only. Meeting ID: **865 9818 5495** Passcode: **751760**
- To ensure the public is able to listen to the Council's deliberation throughout the meeting, all discussion and questions will be made audibly and the chat features in Zoom will not be used.
- This presentation as well as helpful tips are located on the webpage for this meeting: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNTA=>
- If the meeting host becomes disconnected during the meeting, DEQ will attempt for 15 minutes to re-start the meeting. This would require all participants to log back into the meeting. If successful, the meeting would be restarted once quorum was re-established. If unsuccessful, the meeting will be continued and reconvened using the same meeting link, ID, and passcode on Friday, November 13, 2020, at 9:00 am. Only matters appearing on this agenda would be discussed at any such reconvened meeting.

**CONTINUED MEETING/HEARING AGENDA
AIR QUALITY ADVISORY COUNCIL
November 12, 2020, 9:00 a.m.
Virtual Meeting**

Videoconference and Teleconference Information

Meeting link (will open at 8:30am):

<https://us02web.zoom.us/j/86598185495?pwd=VzBOMGVMeVo2ZE5zVDlQRnhYaHhmQT09>

Meeting ID: **865 9818 5495**

Passcode: **751760**

Phone +1 346 248 7799 US (Houston)

For additional information visit:

<https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNTA=>

Or call 405-702-4177

* If the meeting host becomes disconnected during the meeting, DEQ will attempt for 15 minutes to re-start the meeting. Such an event would require all participants (Council members and members of the public) to log back into the meeting. If successful, the meeting would be restarted once a quorum is re-established. If unsuccessful, the meeting will be continued and reconvened using the same meeting link, ID, and passcode on Friday, November 13, 2020, at 9:00 am. Only matters appearing on this agenda would be discussed at any such reconvened meeting. More information for any such meeting would be posted on the DEQ/AQAC webpage.

1. **Call to Order** – Laura Lodes, Chair
2. **Roll Call** – Quiana Fields

3. **Public Rulemaking Hearing** – Agenda items 3.A. and 3.B. are carried over from the Council’s October 21, 2020 meeting.

A. Chapter 4. Rules of Practice and Procedure
Subchapter 7. Environmental Permit Process [AMENDED]

The Department is proposing to amend the air quality portions of Chapter 4, Subchapter 7 to better align the Department’s issuance process and public participation procedures for Part 70 source construction and operating permits with the New Source Review permit requirements and Title V operating permit requirements.

1. Presentation –Tom Richardson, P.E., Rules & Planning (R&P) Section, AQD
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

Overview of Proposed Changes to Air Quality Permitting Rules – Round 4

Air Quality Advisory Council Meeting

November 12, 2020

(Continued from the October 21, 2020, Meeting)



Tom Richardson

Rules & Planning Section

Air Quality Division

Oklahoma Department of Environmental Quality

Meeting Continued

The Air Quality Advisory Council voted to continue the October 21, 2020, meeting, reconvening on this date. To preserve the continuity of the presentation, the presentation slides from the October meeting are included in this deck for reference.

Please skip forward to Slide **31** for the continuation of the presentation.

Introduction

Brief recap, new rule text, example scenarios, and of our plans moving forward:

- ❖ Necessary revisions to our State Implementation Plan (SIP) and the SIP backlog.
- ❖ Issues to be addressed, including the 110(L) Demonstration.
- ❖ New rule text.
- ❖ Final steps in the process.

SIP Backlog and EPA Collaboration



Approved Air Quality Implementation Plans in Oklahoma

This site contains information about air quality regulations called State Implementation Plans (SIPs), Federal Implementation Plans (FIPs), and Tribal Implementation Plans (TIPs) approved by EPA within Oklahoma. To find the status of SIP submittals, visit [SIP status reports](#).

Approved SIPs

- [EPA Approved Regulations in the Oklahoma SIP](#)
- [EPA Approved Source-Specific Requirements](#)
- [EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures](#)
- [About SIPs](#)

Approved TIPs

- EPA has not issued any TIPs in Oklahoma
- [About TIPs](#)

Oklahoma SIP

Backlog – A State Implementation Plan (SIP) is considered to be in backlog if it has been with EPA > 18 months.

EPA has committed to eliminating the backlog.

During the review of our backlogged SIPs, our SIPs have received active review.

Our **collaboration** with EPA has been productive and fruitful. They have worked with us every step of the way and we expect this will expedite approval of our updated SIP.

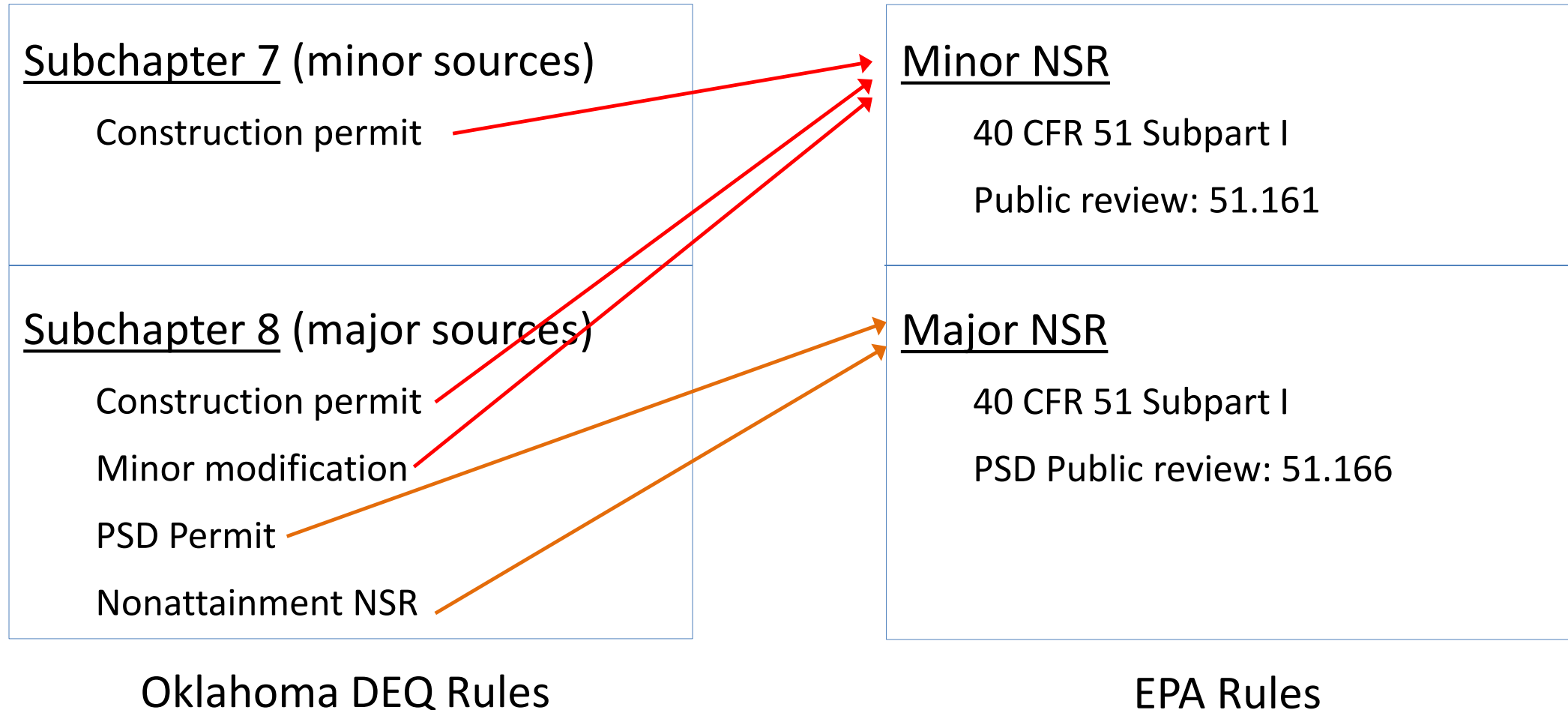
Summary of Issues We Need to Address

Our Prevention of Significant Deterioration (PSD) construction permitting program has been approved and incorporated into our SIP.

Remaining issues to be addressed:

- Public review of the initial Title V permit
- Minor New Source Review (NSR) – with **new thresholds** for minor modifications and exemptions for **replacement units** in Subchapter 7
- Subchapter 7 minor source operating permits
- Definitions added to Subchapter 1

Oklahoma DEQ vs EPA View of NSR



Minor NSR Permits Require Public Review

What will **change** and what will remain the **same**?



Major source (Subchapter 8) construction permits



Minor modifications to Title V operating permits



Subchapter 7 individual facility construction permits



General Permits (GPs) and Permits by Rule (PBRs)



Authorizations to construct and operate under GPs and PBRs

Title V minor mods and individual minor source construction permits will undergo **public review**!

New: Exemptions for minor mod projects with potential emissions < 10 TPY of each regulated air pollutant and replacement units under SC 7.

New Requirements for Public Review

These changes will require that a number of permits previously exempt from public review will now receive public review.

An initial Title V operating permit will follow the Tier II process.

The permit that is issued to move a facility from a Title V permit to a synthetic minor permit will also be Tier II.

Other permitting actions newly required to undergo public review will do so through a web-based process authorized by EPA.

These new requirements will constitute a modification of our Tier I public review system.

Federally Enforceable State Operating Permits

An addition to our definitions: **FESOP**

This term describes the minor source operating permits we issue in Subchapter 7. Components of this program are already in the SIP. However, we need formal adoption.

The initial FESOP will require 30-day public review.

Modifications to FESOPs will proceed two different ways: enhanced NSR or traditional NSR. (The difference between enhanced and traditional NSR will be discussed below).

Enhanced NSR or Traditional NSR

When facilities submit applications for construction permits, they will be asked to choose which public review process they choose to follow:

Enhanced NSR – The public review and EPA review will occur only during the issuance of the construction permit. The operating permit will be modified using the administrative amendment process for Title V permits or minor modifications will be issued without public or EPA review for Subchapter 7 operating permits (FESOPS).

Traditional NSR – The 30-day public review period will occur before the construction permit is issued. EPA will have an opportunity to comment as well, during this period. When it is time to issue the operating permit, there will be another 30-day public review period and, for Title V operating permits, a 45-day EPA review period.

Subchapter 8 – Traditional and Enhanced NSR

Public Review of NSR Permit	Process
Traditional NSR	<p>The construction permit undergoes 30-day public and EPA review. (All NSR permits including minor modifications.)</p> <p>The Title V permit modification undergoes 30-day public and 45-day EPA review.</p> <p>For minor modifications only: the Title V permit modification goes through 45-day EPA review. (No public review required.)</p>
Enhanced NSR	<p>The construction permit undergoes 30-day public and 45-day EPA review.</p> <p>The Title V permit is modified with an administrative amendment (no additional public or EPA review).</p>

Subchapter 7 – Traditional and Enhanced NSR

Public Review of NSR Permit	Process
Traditional NSR	<p>The construction permit undergoes 30-day public and EPA review.</p> <p>The operating permit modification undergoes 30-day public EPA review.</p>
FESOP Enhanced NSR	<p>The construction permit undergoes 30-day public and 30-day EPA review.</p> <p>The operating permit is amended through a modified operating permit (no additional public or EPA review).</p>

Thresholds for Minor Modifications

New **10 TPY exemption threshold** from the requirement for a minor NSR permit for minor modifications to Title V operating permits.

- Our past practice has been to exempt all minor modifications (minor mods) to Title V operation permits from the requirement to obtain a minor NSR permit.
- This practice was never formally incorporated into the SIP.
- The SIP does include an old exemption for facilities and/or projects with emissions and/or emission increases less than 5 TPY (originally 1 lb/hr).
- Our proposed rule text will provide for an exemption from minor NSR for any project with a **potential emissions** increase of less than or equal to 10 TPY of any regulated air pollutant.
- The calculation method will be adapted from the approach used in the Tribal NSR rule [40 CFR Part 49.153(b)].

110(L) Demonstration

When we formally update the SIP, we will need to submit a document referred to as a *demonstration* in accordance with Clean Air Act, Section 110(l):

110(l) PLAN REVISIONS.—Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

An **outline and summary** – in essence a preview of what we plan on preparing – has been posted on the web for review. The formal 110(l) demonstration will be published on the web for public review and comment and a hearing will be provided if needed before the SIP update is submitted to EPA Region 6, on or near September 15, 2021.

Replacement Units in Subchapter 7

Newly proposed rule text will exempt installation of replacement units from the requirement to obtain a construction permit.

- This exemption is only allowed if the replacement unit does not require a change in any emission limit in the existing permit.
- The owner or operator will be required to notify the DEQ in writing within fifteen (15) days of the startup of the replacement unit.
- This exemption includes units subject to emission limits, equipment standards, and/or work practice standards under NSPS and NESHAP.

Permitting Scenarios

The following permitting scenarios are offered to illustrate how owner/operators of facilities will navigate the new permitting rules.

These scenarios are presented as example cases; specific projects and circumstances may require different approaches. Please reach out to the permitting staff early in the process for assistance.

Note: We plan on preparing a **guidance document** with an expanded list of permitting scenarios to highlight the steps that will be followed under the new permitting rules.

Permitting Scenario 1

Issue: PSD minor facility with current Title V permit wants to add an emergency generator. Potential emissions from the project are less than 10 TPY of any regulated air pollutant.

Permitting Requirement: The potential emissions from the project are below the minimum threshold established in OAC 252:100-8-4 (a)(1)(B)(iv) of 10 TPY and the project is **not** required to obtain a construction permit. The facility may file an application for a minor modification to the current Title V permit and may commence construction upon submittal of a complete application. As stated in OAC 252:100-8-7.2 (b)(1)(G) the permittee assumes the risk of losing any investment it makes toward implementing a modification prior to receiving a permit amendment authorizing the modification. The draft permit will be processed under Tier I. No public review is required. The draft permit will undergo the 45-day EPA review required under OAC 252:100-8-8.

Permitting Scenario 2

Issue: A PSD minor facility with a current Title V permit wants to pursue a project for a change in the method of operation that results in a potential increase in emissions greater than 10 TPY but will still be a minor modification.

Permitting Requirement: The potential emissions from the project are above the minimum threshold established in OAC 252:100-8-4 (a)(1)(B)(iv) of 10 TPY and the project is required to obtain a construction permit.

Option 1: Facility chooses Enhanced NSR and undergoes 45-day EPA review at the same time as 30-day public comment period. No substantive comments are received. After waiting additional 15 days (with no comments from EPA), the construction permit is issued. Facility may now proceed with the change in the method of operation. The Title V permit is subsequently modified via administrative amendment.

Option 2: Facility chooses Traditional NSR and undergoes a 30-day public and EPA comment period. No substantive comments are received. The Title V permit is subsequently modified and processed through Tier I and undergoes a 45-day EPA review process. As a minor mod, there is no public review of the Title V modification.

Permitting Scenario 3

Issue: New facility seeks a minor NSR (construction) permit for a new major source. (Note: a minor NSR permit, in this context, will still result in the construction of a facility which will, eventually, obtain a Title V operating permit. Minor NSR just means *not PSD*.)

Permitting Requirement: Because this will be a new facility, there is no existing Title V operating permit and, therefore, the applicant is not eligible for Enhanced NSR. All initial Title V operating permits must go through public review in accordance with OAC 252:4-7-33(b)(1)(C). The Subchapter 8 construction permit will be processed as Tier II with public notice in a newspaper. The subsequent initial Title V operating permit will also be required to be processed under Tier II.

Outline and Summary of Proposed Rule Changes

Chapter 4

- Limit enhanced NSR to facilities that already have Title V operating permits
- To satisfy EPA's rules, our "consistent noticing method" is on the web. Newspaper publication is required for some permitting actions by Oklahoma statute.
- Tier I individual facility construction permits will be noticed on the web.
- Facilities with Subchapter 7 operating permits may use FESOP enhanced NSR.
- FESOPs will be noticed on the web.
- Other notices may be published on the web at the Director's discretion.
- The initial Title V operating permit must undergo Tier II public review.
- To move from a Title V operating permit to a synthetic minor operating permit, a facility must undergo Tier II public review.

Outline and Summary of Proposed Rule Changes

Chapter 100, Subchapter 1

- Add definitions of “New Source Review (NSR)” and “NSR permit.”
- Add “NSR” to the list of acronyms.

Outline and Summary of Proposed Rule Changes

Subchapter 7

- Add definitions of “Federally Enforceable State Operating Permit (FESOP),” “FESOP Enhanced NSR,” “Replacement unit,” and “Traditional NSR process.”
- Clarify that the 5 TPY emission increase project threshold applies to permitted emission increases.
- Replacement units are exempt from the requirement to obtain a construction permit.
- Clarify “duty to comply” language for construction permits and add explicit “duty to comply” language for operating permits.

Outline and Summary of Proposed Rule Changes

Subchapter 7 (Continued)

- Construction (NSR) permits do not, technically, expire. The authorization to construct expires.
- Remove problematic “null and void” language.
- Add operating permit types, parallel to construction permitting types.
- Application for an initial or a modification to an existing FESOP required within 180 days of startup.
- Facilities with FESOPs may use the FESOP enhanced NSR process for future facility modifications.

Outline and Summary of Proposed Rule Changes

Subchapter 8

- Formal definition of “enhanced NSR process” for major source facilities.
- Addition of “traditional NSR process.”
- Add “or change in the method of operation” to yield “physical change or change in the method of operation” to bring Oklahoma’s definition in line with EPA.
- Minor modifications will require NSR permits when associated with a “physical change or change in the method of operation.”
- Permitting threshold (10 TPY potential emission increases of each pollutant) triggers the requirement to get a minor NSR permit.
- Potential emission increases will be calculated following the approach from the Tribal NSR Rule.

Outline and Summary of Proposed Rule Changes

Subchapter 8 (Continued)

- Delete unnecessary language setting up the initial schedule for applying for Title V operating permits.
- Facilities with existing Title V permits are eligible for enhanced NSR.
- Applicants will need to choose between traditional NSR and enhanced NSR.
- Enhanced NSR allows the Title V operating permit to be modified with an administrative amendment.
- The process DEQ follows for EPA review will be clarified for traditional and enhanced NSR.
- The petition process only applies to the Title V operating permit.

Outline and Summary of Proposed Rule Changes

Subchapter 8 (Continued)

- DEQ may issue an NSR permit under the traditional NSR process over an EPA objection to an enhanced NSR permit at the Director's discretion. The objection would still need to be addressed when the Title V operating permit is issued.

Meeting Continued – Additional Presentation Slides

Additional presentation slides continue **here**.

The earlier slides were retained for continuity. If there is a question regarding information presented in the October meeting, we can refer back to those slides.

The Oklahoma SIP

Title 40: Protection of Environment

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS (CONTINUED)

Subpart LL—Oklahoma

Before discussing additional topics, we would like to take note of what *is* and, more significantly, what *is not* currently in the Oklahoma Air Quality SIP.

§52.1920 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan (SIP) for Oklahoma under section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date on or before June 1, 2000, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the FEDERAL REGISTER. Entries in paragraphs (c) and (d) of this section with EPA approval dates after June 1, 2000, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 6 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of June 1, 2000.

(3) Copies of the materials incorporated by reference may be inspected at <https://www.epa.gov/sips-ok> or the Environmental Protection Agency, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102. If you wish to obtain material from the EPA Regional Office, please call (800) 887-6063 or (214) 665-2760.

(c) *EPA approved regulations.*

State citation	Title/subject	State effective date	EPA approval date	Explanation
Oklahoma Air Pollution Control Regulations				
Regulation 1.4. Air Resources Management Permits Required				
Regulation 1.4.1 General Permit Requirements				
1.4.1(a)	Scope and purpose	¹ 5/19/1983	8/25/1983, 48 FR 38635	Applicable to minor NSR permitting under OAC 252:100-8 only.
1.4.1(b)	General requirements	6/4/1990	7/23/1991, 56 FR 33715	Applicable to minor NSR permitting under OAC 252:100-8 only.
1.4.1(c)	Necessity to obtain permit	6/4/1990	7/23/1991, 56 FR 33715	Applicable to minor NSR permitting under OAC 252:100-8 only.
1.4.2 Construction Permit				
1.4.2(a)	Standards required	6/4/1990	7/23/1991, 56 FR 33715	Applicable to minor NSR permitting under OAC 252:100-8 only.
1.4.2(b)	Stack height limitation	6/11/1989	8/20/1990, 55 FR 33905	Applicable to minor NSR permitting under OAC 252:100-8 only.
1.4.2(c)	Permit applications	6/4/1990	7/23/1991, 56 FR 33715	Applicable to minor NSR permitting under OAC 252:100-8 only.
1.4.2(d)	Action on applications	¹ 5/19/1983	8/25/1983, 48 FR 38635	Applicable to minor NSR permitting under OAC 252:100-8 only.
1.4.2(f)	Construction permit conditions	¹ 5/19/1983	8/25/1983, 48 FR 38635	Applicable to minor NSR permitting under OAC 252:100-8 only.
1.4.2(g)	Cancellation of authority to construct or modify	¹ 2/6/1984	7/27/1984, 49 FR 30184	Applicable to minor NSR permitting under OAC 252:100-8 only.

The state citation shows which rules are currently in the SIP.

The 1.4.x citation refers to Oklahoma State Health Department rules that were submitted in the 1980s and early 1990s.

None of these rules are currently “on the books” in the old format; current air quality rules have migrated to Title 252 of the Oklahoma Administrative Code (OAC). However, the old rules continue to undergird the air quality permitting program.

OKLAHOMA ADMINISTRATIVE CODE, TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY				
CHAPTER 4 (OAC 252:4). RULES OF PRACTICE AND PROCEDURE				
Subchapter 1. General Provisions				

252:4-7-13	Notices	9/15/2017	4/10/2020, 85 FR 20178	The SIP does NOT include (e), (f), or (g) (4). Applicable to minor NSR permitting under OAC 252:100-7 and major NSR permitting under OAC 252:100-8.
------------	---------	-----------	------------------------------	---

Part 3. Air Quality Division Tiers and Time Lines				
252:4-7-31	Air quality time lines	6/11/2001	5/15/2017, 82 FR 22281	Applicable to minor NSR permitting under OAC 252:100-7. Approved for major NSR permitting 11/26/2010, 75 FR 72695.
252:4-7-32	Air quality applications—Tier I	6/1/2003	4/10/2020, 85 FR 20178	Applicable to minor NSR permitting under OAC 252:100-7. The SIP does NOT include (a), (b), or (c)(1).
252:4-7-33	Air quality applications—Tier II	6/1/2003	4/10/2020, 85 FR 20178	The SIP does NOT include (c)(4).
252:4-7-34	Air quality applications—Tier III	6/11/2001	11/26/2010, 75 FR 72695	

Note the number of components **not** included in our SIP.

Appendices for OAC 252: Chapter 4				
252:4, Appendix A	Petition for Rulemaking Before the Environmental Quality Board	6/11/2001	12/29/2008, 73 FR 79400	
252:4, Appendix B	Petition for Declaratory Ruling	6/11/2001	12/29/2008, 73 FR 79400	
252:4, Appendix C	Permitting process summary	6/11/2001	5/15/2017, 82 FR 22281	Applicable to minor NSR permitting under OAC 252:100-7. Approved for major NSR permitting 11/26/2010, 75 FR 72695. NOT in SIP: Tier I column.
252:4, Appendix D	Style of the Case in an Individual Proceeding	6/11/2001	12/29/2008, 73 FR 79400	

Appendix C to Chapter 4: Tier I column **not** included in our SIP.



CHAPTER 100 (OAC 252:100). AIR POLLUTION CONTROL				
Subchapter 1. General Provisions				

Subchapter 7. Permits for Minor Facilities				
Part 1. General Provisions				
252:100-7-1	Purpose	6/25/1998	5/15/2017, 82 FR 22281	
252:100-7-1.1	Definitions	6/11/1999	5/15/2017, 82 FR 22281	
252:100-7-2	Requirement for permits for minor facilities	6/1/2001	5/15/2017, 82 FR 22281	NOT in SIP: Subsection (a), second sentence.

Not included in our SIP.

252:100-7-2. Requirement for permits for minor facilities

(a) **Permit required.** Except as provided in OAC 252:100-7-2 and 252:100-7-18(b), no person may commence construction or modification of any minor facility, may operate any new minor facility, or may relocate any minor portable source without obtaining a permit from the DEQ. For additional application and permitting procedures, see OAC 252:4, Subchapter 7. Environmental Permit Process.

Feedback from Florida DEP

Florida Department of Environmental Protection



We reached out to one of the managers in the Air Division of the Florida Department of Environmental Protection (DEP).

- Florida DEP withdrew their 14-day public comment period for their minor NSR program from their SIP submission.
- Additional notes on Florida DEP's FESOP program.

Current Subchapter 7 Operating Permits

After receiving feedback from the Council and stakeholders on our plans concerning current Subchapter 7 operating permits, we reached out to EPA Region 6 for additional feedback. To summarize:

- Discussion with EPA legal staff lends support to the Department's belief that the current rules incorporated into the SIP provide a foundation for the **federal enforceability** of all current Subchapter 7 operating permits.
- There are issues with some aspects of our program that could, should EPA choose to issue a finding of deficiency, imperil that status in the future. That element of risk will continue until the Department addresses all outstanding issues, both with regard to the minor NSR program and the Subchapter 7 operating permit program.
- EPA staff has clarified that if DEQ submits and EPA approves a FESOP program in Oklahoma's SIP, the approval would be "date forward."

Current Subchapter 7 Operating Permits

Based on Council, stakeholder, and EPA feedback, our plans are as follows:

- All current Subchapter 7 operating permits will continue in their present status. There is no plan for a “batch public notice” of these permits.
- After adoption of the proposed rules, any new construction permit for a minor facility will go through Traditional NSR. The subsequent operating permit will be a FESOP.
- If an owner or operator applies for a modification to an existing facility’s permit, the draft of the modified operating permit will undergo public review and will be issued as a FESOP.
- If an owner or operator wishes to move to a FESOP, the owner or operator will need to submit an application for a permit modification.

Reasonable Possibility Language

Based on feedback from stakeholders, we are planning on bringing a proposed rulemaking to the Council for consideration of the incorporation of the "reasonable possibility" language from 40 CFR 52.21(r) into the OAC 252:100-8-36.2(c) source obligation requirements.

We would note that the programmatic obligations are outlined in 40 CFR 51.166(r)(6)(i) through (vi), including the "reasonable possibility" language.

Our intention is to bring proposed language to the Council at a future date.

Additional Feedback from EPA Region 6



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

November 6, 2020

Ms. Kendal Stegmann
Director, Air Quality Division
Oklahoma Department of Environmental Quality
707 North Robinson Street
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

RE: Clarifications to the Oklahoma SIP and Part 70 Permit Program

Dear Ms. Stegmann:

In addition to our on-going discussions, EPA issued a letter (signed by David F. Garcia, P.E., Director of the Air and Radiation Division, dated November 6, 2020) to offer support for our work updating the rules and to clarify their position on a number of issues. At this time, I would like to read the letter into the record.

The United States Environmental Protection Agency Region 6 is writing to express our continued support of the revisions to the Oklahoma Administrative Code (OAC) at Title 252, Chapter 4, Sections 4-7-13, 4-7-32, and 4-7-33 and Chapter 100, Sections 100-1-3, 100-1-4, 100-2-3, 100-7-1.1, 100-7-15, 100-7-18, 100-8-2, 100-8-4, 100-8-5, 100-8-7.2, 100-8 and Appendix Q, as proposed on September 15, 2020. As stated in our October 15, 2020, comment letter, we believe the proposed revisions could address certain areas of concern in the Oklahoma air permitting program which have been identified through several years of discussions between the Oklahoma Department of Environmental Quality (ODEQ) and the EPA Region 6.

The EPA staff attended an October 21, 2020 meeting with the Oklahoma Air Quality Advisory Council (AQAC) in support of the proposed revisions. The AQAC did not approve the proposed revisions at this meeting; instead expressing significant concerns and doubts about the necessity of the proposed revisions.

This letter provides clarification of the scope of the existing Oklahoma construction permit program in the Oklahoma State Implementation Plan (SIP) and the EPA-approved Oklahoma Part 70 air permitting program and highlights the necessity for the proposed revisions. We have several pending Oklahoma SIP submittals and revisions to the Oklahoma Part 70 air permitting program that we have not yet acted upon, choosing to work with the ODEQ in an effort to develop State regulatory solutions designed to meet federal Clean Air Act (CAA) requirements for SIPs and Title V programs. If an acceptable regulatory solution is not adopted by Oklahoma, the EPA will proceed with actions on the pending submittals and revisions consistent with our CAA obligations. Enclosed are several clarifications regarding the Oklahoma SIP and the Oklahoma Part 70 air permitting program, as well as, the impact of the proposed regulatory revisions.

We hope the enclosed clarifications will be useful to the ODEQ in its effort to support the changes necessary to address our mutual concerns in the rulemaking process. Should you have questions, please reach out to me directly at 214-665-7593, or feel free to contact Ms. Cynthia Kaleri at 214-665-6772.

Sincerely,

11/6/2020

X 

David F. Garcia, P.E.

Signed by: DAVID GARCIA

Director

Air and Radiation Division

Enclosure

cc: Melanie Foster, ODEQ

Please note the attachment mentioned in the letter. I will not read it into the record; it is available for review in the meeting packet and on the web.

Our Path Forward

We made a small number of **additional changes** to the version of the rules presented during the October 21 meeting. Most of those changes were made in response to comments received from stakeholders. Thank you for your help and your input!

In the review of the proposed rule changes, to be discussed momentarily, we will highlight the date that a particular change to rule language was first shared with the public.

Please note that staff will recommend that the Council adopt the proposed rule changes shared today.

With that, we would like to turn to the specific rule language.

Chapter 4 Changes

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE
SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS
PART 1. THE PROCESS

Please turn in your packets to the proposed amendments to rule text in Chapter 4, Subchapter 7.

This document is available on the web:

[Chapter 4: Rules of Practice and Procedure](#) (Amended Sections)

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 1. THE PROCESS

252:4-7-13. Notices

(g) **Additional notice content requirements for Clean Air Act Permits.** In addition to the notice provisions of 27A O.S. §§ 2-14-301, ~~and 2-14-302, and 2-14-304(C)~~, and other provisions of this section, the following requirements apply.

- (1) **For Tier II and Tier III air quality applications, applicants** ~~Applicants~~ shall give notice by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the DEQ, including those who request in writing to be on the list; and by other means if determined by the Executive Director to be necessary to assure adequate notice to the affected public.
- (2) All published notice(s) for permit modification shall identify the emissions change involved in the modification.
- (3) An applicant for a Part 70 permit that may affect the air quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-5-112(E)]

Please note that, in this presentation, much of the rule language *not being changed* has been **omitted**. The complete text of each section is included in the rule text documents included in the packet and on the web.

The highlighted text clarifies that only Tier II and III applications require public notice in the newspaper.

Originally posted on Sept 15.
Highlighted text added **Nov 9**.


Chapter 4 Changes

(4) ~~An~~ A modification of an existing Part 70 source operating permit may be issued to an applicant for a new Part 70 operating permit without further public review if the operating permit modification accommodates a change for which no construction permit is required under 100-8-4(a)(1), or is based on a construction permit that meets the requirements of 252:4-7-32(b)(1)(B) 252:4-7-32(b)(2)(A) or (B). In the latter case, and the public notice for the construction permit ~~contains~~ shall contain the following language.

(A) This permit is subject to EPA review, EPA objection, and petition to EPA, as provided by 252:100-8-8 and 40 CFR § 70.8.

(B) If the operating permit as modified has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2), the operating permit modification will be issued without further public notice and comment; and,

(C) The public will not receive another opportunity to provide comments when the modified operating permit is issued.




These changes limit “enhanced NSR” to facilities that already have Title V permits.

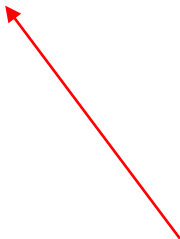
New language posted Sept 15.
Highlighted corrections added **Nov 9**.

(6) In addition to any obligation for an applicant to publish notices under 27A O.S. Sections 2-14-301, 2-14-302, and 2-14-304, DEQ shall prepare and provide corresponding notices on the agency's web site for Tier II and III applications. Such notices shall, at a minimum, provide the same information as is provided in the corresponding published notices, which information may be posted in tabular form. For purposes of permits under OAC 252:100-8, Part 7 (PSD), these postings shall constitute the "consistent noticing method" referred to in 40 CFR Section 51.166(q)(2)(iii).

(7) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft individual construction permits and draft individual construction permit modifications for Tier I applications. Such notices shall, at a minimum, provide information consistent with the requirements of 40 CFR Section 51.161, and may be posted in tabular form with appropriate links to additional information sources.



EPA requires us to pick one “consistent noticing method” and we are choosing the web for that. Our state statutes on public review also require publication in the newspaper for certain permitting actions. Those are in addition to the EPA requirement. Those will not change.



New requirements for Tier I public review will be noticed *exclusively* on the web.

Chapter 4 Changes

(8) If a minor facility is eligible to use the FESOP Enhanced NSR process under OAC 252:100-7, the public notice for a construction permit for modification of a permitted minor facility prepared and posted under paragraph (7) shall contain a statement to the following effect: The facility's subsequent operating permit modification will be issued without further public notice and comment, unless the operating permit conditions as modified significantly differ from the construction permit's operating conditions.

(9) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft minor facility individual operating permits for Tier I applications and for draft modifications of existing minor facility operating permits for Tier I applications. Such notices shall, at a minimum, provide information consistent with the requirements of OAC 252:4-7-13(c), and may be posted in tabular form with appropriate links to additional information sources. However, for a minor facility that is eligible to use the FESOP Enhanced NSR process under OAC 252:100-7, a modification of an existing minor facility operating permit may be issued without further public review if the operating permit modification is based on a construction permit that was made available for review and comment under 252:4-7-13(g)(7) and (8).

(10) Posting of such notices for other authorizations as listed in OAC 252:4-7-32(c) shall be at the Director's discretion. In addition, posting of such notices for other Tier I applications, including Tier I applications under OAC 252:4-7-32(a)(2)(C) or OAC 252:4-7-32(b)(2)(C) for extension of expiration date of a construction permit, shall be at the Director's discretion.

Paragraph (8) will allow minor facilities to use FESOP enhanced NSR to incorporate construction permit requirements into a minor source operating permit (FESOP).

Tier I draft operating permits (FESOPs) will be posted on the web for public review.

Other notices may be posted at the Director's discretion.

New language posted Sept 15.

Updated **Nov 9** (highlighted).

Chapter 4 Changes

PART 3. AIR QUALITY DIVISION TIERS AND TIMELINES

252:4-7-32. Air quality applications - Tier I

(b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier I applications.

(1) **New permits.**

(A) New construction permit for an existing Part 70 source for any change considered minor under 252:100-8-7.2(b)(1).

~~(B) New operating permit that:~~

~~(i) is based on a construction permit that was processed under Tier II or III, and 252:100-8-8, and~~

~~(ii) has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2).~~

The initial Title V permit will undergo Tier II public review.

No change from
June presentation!

Chapter 4 Changes

(2) Modifications of permits.

(A) Modification of any operating permit condition that ~~(i)~~ is based on the operating conditions of a construction permit that was processed under Tier I, II or III, and 252:100-8-8, and

~~(ii)-(i)~~ does not differ from those construction permit conditions in any way considered significant under 252:100-8-7.2(b)(2) or,

(ii) accommodates a change for which no construction permit is required under 100-8-4(a)(1).

(B) A construction or operating permit modification that is minor under 252:100-8-7.2(b)(1).

(C) Extension of expiration date of a Part 70 source's construction permit with no or minor modifications.

Minor NSR permits for facilities which will be minor mods to the Title V operating permit will be Tier I.

Tier I minor NSR permits will be able to be processed using enhanced NSR.

Posted Sept 15. Updated Oct 21.

252:4-7-33. Air quality applications - Tier II

(a) Minor facility permit actions.

(1) Any minor facility seeking a permit for a modification that when completed would turn it into a Part 70 source is required to apply under subsection (b) of this section.

(2) Any Part 70 source seeking a permit that would limit its potential to emit such that when issued it would qualify as a minor facility requires a Tier II application.

(b) Part 70 source permits. The following air quality authorizations for Part 70 sources require Tier II applications.

(1) New permits.

(A) New construction permit for a new Part 70 source not classified under Tier III.

(B) New construction permit for an existing Part 70 source for any change considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.

(C) New operating permit for a Part 70 source ~~that did not have an underlying construction permit processed under Tier II or III, and 252:100-8-8.~~

(D) ~~[Reserved] New operating permit with one or more conditions that differ from the underlying Tier II or III construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).~~

(E) New acid rain permit that is independent of a Part 70 permit application.

(F) New temporary source permit under 252:100-8-6.2.

A permit issued to move a facility from a Title V operating permit to a synthetic minor operating permit requires Tier II public review.

The initial Title V permit will undergo Tier II public review.

No change from
June presentation!

Chapter 4: Conclusion and Request

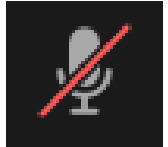
That concludes my presentation on our proposed changes to Chapter 4.

AQD staff recommends the Council pass Chapter 4. However, given the interrelatedness of Chapter 4 with the Chapter 100 proposed changes that follow, it may behoove the Council to vote to postpone discussion by the Council and comment from the public until after I have completed my Chapter 100 presentation.

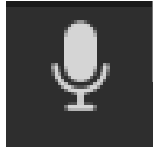
Thank you!

Questions & Discussion by the Council

- Please be sure to unmute yourself.



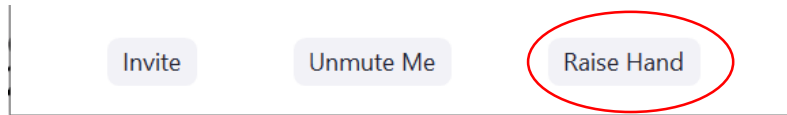
Muted



Unmuted

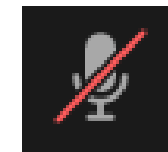
Public Questions & Comments

- If you wish to make a comment, click the “**Raise Hand**” feature on your device at the bottom of the Participants list (may show as “...”) or use ***9 on your phone** keypad.

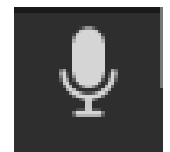


Keyboard shortcut PC: **Alt+Y** Mac: **Option+Y**

- If you do not have a microphone on your device or cannot use the Raise Hand feature, you will need to call 1-346-248-7799 Meeting ID: 865 9818 5495 Passcode: 751760.
- The host will identify you by name or the last four digits of your phone number when it is your turn to speak and then unmute your line.
- You may also have to unmute yourself using the microphone symbol or *6 on your phone keypad.
- Please state your name and affiliation for the record.
- You will have approximately 3 minutes to make a comment.

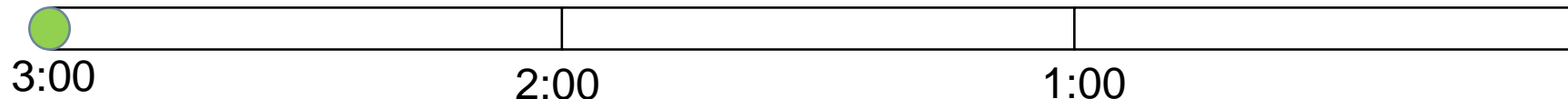


Muted



Unmuted

Time left



Discussion & Possible Action by the Council

B. Chapter 100. Air Pollution Control
Subchapter 1. Definitions [AMENDED]
Subchapter 7. Permits for Minor Facilities [AMENDED]
Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources [AMENDED]

The Department is proposing to amend definitions and permitting requirements in Subchapters 1, 7, and 8 to better align the Department's permit requirements and issuance process for construction and operating permits with the NSR permit requirements and Title V operating permit requirements and make other minor updates.

1. Presentation – Tom Richardson, P.E., R&P Section, AQD
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

Chapter 100 Changes

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

Please turn in your packets to the proposed amendments to rule text in Chapter 100.

This document is available on the web:

[Chapter 100: Air Pollution Control](#) (Amended Sections)

July 22
with
correction.

Chapter 100, Subchapter 1 Changes

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

SUBCHAPTER 1. GENERAL PROVISIONS

252:100-1-3. Definitions

"New source review" or "NSR" means a process of evaluation performed by the DEQ to determine the applicable requirements that must be incorporated into a construction permit issued by the DEQ as necessary to authorize construction, modification, or change in the method of operation of a new or existing stationary source. DEQ's NSR program, at a minimum, must meet the requirements of 40 CFR Part 51, Subpart I.

"NSR permit" means a construction permit issued by the DEQ as necessary to authorize construction, modification, or change in the method of operation of a new or existing stationary source.

"Title V permit" means (unless the context suggests otherwise) an operating permit for a Part 70 source.

252:100-1-4. Units, abbreviations, and acronyms

(19) NSR - New Source Review

NSR and NSR permit are defined in Subchapter 1 to clarify changes to our construction permit requirements to allow us to better bring our program into alignment with EPA's Part 51 requirements.

Adopted last year. Should not have been underlined.

NSR is added to the list of acronyms.

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

PART 1. GENERAL PROVISIONS

252:100-7-1.1. Definitions

"De minimis facility" means a facility that meets the requirements contained in paragraphs (A) and (B) of this definition.

(A) All the air pollutant emitting activities at the facility are on the de minimis list contained in Appendix H or the facility meets all of the following de minimis criteria:

(i) The facility has actual emissions of 5 ~~tpy~~ **TPY** or less of each regulated air pollutant, except that fraction of particulate matter that exhibits an aerodynamic particulate diameter of more than 10 micrometers (μm).

(ii) The facility is not a "major source" as defined in OAC 252:100-8-2.

(iii) The facility is not a "major stationary source" as defined in OAC 252:100-8-31 for facilities in attainment areas.

(iv) The facility is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas.

(v) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.

(vi) The facility has not opted to obtain or retain an Air Quality Division permit.

(B) The facility is not subject to the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63).



TPY should be all capitals.

Corrected **Nov 9.**

"Federally Enforceable State Operating Permit" or "FESOP" means an operating permit issued under Subchapter 7 of this Chapter, including operating permits issued under the provisions of 252:4-7-33(a)(2). As such, for the purposes of this subchapter, "FESOP" and "operating permit" are synonymous.

"FESOP Enhanced NSR process" means a process under which the evaluation of requirements applicable under NSR is integrated with a determination of procedural and compliance requirements under the DEQ's FESOP program. This process is only available for facilities already operating under a FESOP permit. Under a FESOP enhanced NSR process, the 30-day public and EPA review period of a draft NSR permit is integrated with the review of the draft FESOP modification, and results in the issuance of a minor source construction permit whose applicable FESOP implications have also been reviewed. Later the requirements of the construction permit may be incorporated into a modified FESOP using the minor source operating permit modification process, without further public or EPA review, as authorized in OAC 252:4-7-13(g)(9) and OAC 252:100-7-18(f).

All operating permits issued under Subchapter 7 will be FESOPs.

The FESOP enhanced NSR process allows a construction permit for a facility with an existing Subchapter 7 operating permit (FESOP) to undergo public and EPA review with specific language indicating that this is the only opportunity for such review. The modification to the operating permit would incorporate the requirements from the construction permit, but would not require another round of either public or EPA review.

July 22 with clarification on **Nov 9**.

"Permit exempt facility" means a facility that:

- (A) has actual emissions in every calendar year that are 40 ~~tpy~~ **TPY** or less of each regulated air pollutant;
- (B) is not a de minimis facility as defined in OAC 252:100-7-1.1;
- (C) is not a "major source" as defined in OAC 252:100-8-2 for Part 70 sources;
- (D) is not a "major stationary source" as defined in OAC 252:100-8-31 for PSD facilities in attainment areas;
- (E) is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas;
- (F) is not operated in conjunction with another facility or source that is subject to air quality permitting;
- (G) is not subject to an emission standard, equipment standard, or work practice standard in the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63); and
- (H) is not subject to the requirements of OAC 252:100-39-47.

TPY should be all capitals.

Corrected on **Nov 9**.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met.


(A) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. Section 60.15(b)(1), the emissions unit is a reconstructed unit within the meaning of paragraph (1) in the definition of "Reconstruction" in 40 C.F.R. Section 63.2, or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.


(C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Traditional NSR process" means a process under which the evaluation of requirements applicable under NSR is performed independently of the determination of procedural and compliance requirements under the FESOP program. This process is required for facilities that have not yet received a FESOP, but it may also be used (as an alternative to the FESOP Enhanced NSR process) for facilities that have already received a FESOP. The traditional NSR process provides a 30-day public and EPA review period on the draft construction (NSR) permit, as described in OAC 252:100-7-17 and OAC 252:4-7. This process is independent of the subsequent application, review, and issuance process for the source's initial or modified FESOP that also includes a 30-day public and EPA review period, as described in OAC 252:100-7-18 and OAC 252:4-7.



Replacement unit defined in Subchapter 7. Replacement units will be exempt from minor NSR. New language was added in response to stakeholder comment.



Traditional NSR added to the definitions in Subchapter 7 based on stakeholder comment.

Sept 15 with additional text on Oct 21.

Sept 15 with
correction on Oct 21.

PART 3. CONSTRUCTION PERMITS

252:100-7-15. Construction permit

(a) **Construction permit required.** A construction permit is required to commence construction or installation of a new facility or the modification of an existing facility as specified in OAC 252:100-7-15(a)(1) and (2).

(1) **New Facility.** No person shall cause or allow the construction or installation of any new minor facility other than a de minimis facility or a permit exempt facility as defined in OAC 252:100-7-1.1 without first obtaining a DEQ-issued air quality construction permit.

(2) **Modification of an existing facility.**

(A) A construction permit is required for any modification that would cause an existing facility to no longer qualify for de minimis status, permit exempt facility status, or its current permit category.

(B) A construction permit is required for an existing facility covered by an individual permit:

(i) to add a piece of equipment or a process that is subject to an emission standard, equipment standard, or work practice standard in a federal NSPS (40 CFR Part 60) or a federal NESHAP (40 CFR Parts 61 and 63) or

(ii) to add or physically modify a piece of equipment or a process that results in an permitted emissions increase in actual emissions of any one regulated air pollutant by more than 5 TPY.


(C) The requirement to obtain a construction permit under OAC 252:100-7-15(a)(2)(B)(i) does not apply to replacement of a piece of equipment, provided the replacement unit does not require a change in any emission limit in the existing permit, and the owner or operator notifies the DEQ in writing within fifteen (15) days of the startup of the replacement unit, and/or as otherwise specified by the permit.

Clarification that the 5 TPY threshold applied to permitted emissions increases.

Replacement units will be exempt from the requirement for a minor NSR permit. Typo corrected after the Sept. 15 version was posted.

Sept 15

(e) **Duty** ~~Failure to comply with a the~~ **construction permit.** The permittee shall comply with all limitations and conditions of the construction permit. A violation of the limitations or conditions contained in the construction permit shall subject the owner or operator of a facility to any or all enforcement penalties, including permit revocation, available under the Oklahoma Clean Air Act and Air Pollution Control Rules. No operating permit will be issued until the violation has been resolved to the satisfaction of the DEQ.



Slight change in terminology. This language was amended after we added a “duty to comply” requirement to explicitly extend that requirement to operating permits (FESOPs).

July 22 with correction on Sept 15.

(f) **Cancellation of authority to construct or modify.** ~~A duly issued permit~~ The authority to construct or modify granted by a duly issued construction permit will terminate and become null and void (unless extended as provided below) if the construction is not commenced within 18 months of the permit issuance date, or if work is suspended for more than 18 months after it has commenced.

(g) **Extension of authorization to construct or modify.**

(1) Prior to the permit expiration date, a permittee may apply for extension of the permit by written request of the DEQ stating the reasons for the delay/suspension and providing justification for the extension. The DEQ may grant:

(A) one extension of 18 months or less or

(B) one extension of up to 36 months where the applicant is proposing to expand an already existing facility to accommodate the proposed new construction or the applicant has expended a significant amount of money (1% of total project cost as identified in the original application, not including land cost) in preparation for meeting the definition of "commence construction" at the proposed site.

(2) If construction has not commenced within three (3) years of the effective date of the original permit, the permittee must undertake and complete an appropriate available control technology review and an air quality analysis. This review must be approved by the DEQ before construction may commence.

(h) **Expiration of authorization to construct or modify.** The authorization to construct or modify under the construction permit shall expire upon completion of the construction or modification, or as otherwise provided in (e), (f), or (g). However, the requirements established under (d) shall continue in effect until and unless the facility or affected unit ceases operations, was never constructed in the first place, or the requirement is superseded under a subsequently-issued construction permit or a FESOP that has undergone public review.

NSR permits do not technically expire. They are superseded by later permits. But the authority to construct will terminate.

The "null and void" language is problematic and will no longer be used.

Clarification of circumstances under which authorization to construct expires. Hard return deleted (corrected) on Sept 15.

July 22, Oct 21, and Nov 9
typo correction.

PART 4. OPERATING PERMITS

252:100-7-18. Operating permit

(a) **Permit required.** An operating permit is required for a minor facility as specified in OAC 252:100-7-18(a)(1) and (2).

(1) **New facility.** No person shall cause or authorize the operation of a new minor facility for more than a 180-day period after commencement of operation without applying for a DEQ-issued air quality operating permit.

(2) **Modification of an existing facility.** No person shall cause or authorize the operation of a minor facility modified pursuant to OAC 252:100-7-15(a)(2) for more than a 180-day period after commencement of operation without applying for a DEQ-issued air quality operating permit or for modification of the facility's existing operating permit.

(d) **Permit Categories.** Three types of operating permits are available: permit by rule, general permit, and individual permit. See OAC 252:100-7-15(b) for a complete The description of the permit categories in OAC 252:100-7-15(b) also applies to operating permits.

(f) **Operating permit conditions.**

(1) Emission limitations and other permit conditions established and made a part of the construction permit are incorporated into and become enforceable limitations-requirements of the subsequently issued operating permit.

(2) Permit limitations in adjustment of, or in addition to, the facility's construction permit limitations may be made a condition of the facility's operating permit issuance.

(3) For a minor facility modified under a construction permit issued pursuant to OAC 252:100-7-15(a)(2), the operating permit may be modified using the FESOP enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(7)-(9) to incorporate the operating permit conditions described in paragraphs (1) and (2).

Clarification that the facility must submit an application for an operating permit or a **modified operating permit** within 180 of startup of any emission unit whose construction was authorized by a construction permit.


Clarification (operating permit types) added today.

All permit conditions become requirements of the FESOP.

Minor source facilities may use the FESOP enhanced NSR process so an additional round of public review is not required for the operating permit.

Sept 15

(g) **Duty to comply with the operating permit.** The permittee shall comply with all limitations and conditions of the operating permit. A violation of the limitations or conditions contained in the operating permit shall subject the owner or operator of a facility to any or all enforcement penalties, including permit revocation, available under the Oklahoma Clean Air Act and Air Pollution Control Rules.



The explicit “duty to comply” language was added based on input from EPA Region 6.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE REVIEW (NSR) SOURCES

July 22

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-2. Definitions

"Enhanced NSR process" means a process under which the evaluation of requirements applicable under NSR is integrated with a full determination of procedural and compliance requirements under the Part 70 source (Title V) operating permit program. This process is an alternative to traditional NSR process, and is only available for facilities already operating under a Title V permit. Under the enhanced NSR process, the 30-day public review period for a draft NSR permit is integrated with the 45-day EPA review of the Title V permit and would allow for the issuance of a major source construction permit whose applicable Title V implications have also been reviewed. Therefore, the applicable requirements of the construction permit may later be incorporated as a modification to the Title V operating permit using the administrative amendment process of OAC 252:100-8-7.2(a) – without further public or EPA review, as authorized in OAC 252:4-7-13(g)(4).

"Traditional NSR process" means a process under which the evaluation of requirements applicable under NSR is performed independently of the determination of procedural and compliance requirements under the Part 70 source (Title V) operating permit program. This process is required for facilities that have not yet received a Part 70 source operating permit, but it may also be used (as an alternative to the enhanced NSR process) for facilities that have already received a Part 70 source operating permit. Under the traditional NSR process, the EPA has an opportunity to review a draft construction permit during the 30-day public review period. This process is independent of the subsequent application, review, and issuance process for the source's initial or modified Part 70 source operating permit that includes a 30-day public review period and a separate 45-day EPA review period, as described in OAC 252:100-8-8 and OAC 252:4-7.

This is the definition of the enhanced NSR process for major source facilities. The enhanced NSR process is, in effect, how the Oklahoma DEQ's air permitting program has operated (by default) for years. This change formally brings the process into alignment with EPA rules.

The traditional NSR process eliminates the need for the extra 45-day EPA review of an NSR permit. However, the 30-day public and 45-day EPA review would be required when the Title V operating permit modification is issued.

252:100-8-4. Requirements for construction and operating permits

(a) Construction permits.

(1) Construction permit required.

(A) Facilities without Part 70 operating permits. No person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit under Part 5 of OAC 252:100-8.

(B) Facilities with Part 70 operating permits. A construction permit is also required prior to

(i) reconstruction of a major affected source under 40 CFR Part 63,

(ii) reconstruction of a major source if it would then become a major affected source under 40 CFR Part 63, or

(iii) for commencement of any physical change or change in method of operation that would be a significant modification under OAC 252:100-8-7.2(b)(2), or

(iv) commencement of any physical change or change in method of operation that, for any one regulated air pollutant, would increase potential to emit by more than 10 TPY, calculated using the approach in 40 C.F.R. Section 49.153(b).

(C) Additional Requirements. In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this Subchapter must also meet the applicable requirements contained therein.

“Physical change **or change in the method of operation**” aligns with EPA usage.

Minor modifications will now require construction permits, because they are considered to be minor NSR under EPA’s Part 51 rules. However, projects will be exempt from the requirement to obtain a minor NSR permit if they have potential emissions of each regulated air pollutant at or below the 10 TPY threshold.

Potential emissions increases will be calculated using the approach outlined in the Tribal NSR Rule.

Sept 15 with clarification
added on Oct 21.

Sept 15

(b) Operating permits.

~~(3) **Timely application.** Sources that are subject to the operating permit program established by this Chapter as of March 6, 1996, shall file applications on the following schedules outlined in OAC 252:100-8-4(b)(4). A timely application is one that is postmarked on or before the relevant date listed in OAC 252:100-8-4(b) below. In the event a major source consists of operations under multiple SIC codes, the primary activity shall form the basis for the initial permit application.~~

~~(4) **Application submittal schedule.** The following sources are subject to the operating permit program and shall submit initial permit applications according to the following schedule.~~

~~(A) No later than September 5, 1996:~~

~~(i) Affected sources under the acid rain provisions of the Act shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file an application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the DEQ no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides, pursuant to the Act, §407.~~

~~(ii) Any owner or operator shall submit no less than one-third of their total applications for Part 70 sources located at sources classified by the following Source Standard Industrial Classification Codes and which belong to a single major industrial grouping other than 28 (Chemicals and allied products) or 29 (Petroleum refining and related industries):~~

~~(I) Petroleum and Natural Gas, 1311;~~

~~(II) Natural Gas Liquids, 1321;~~

~~(III) Electric Services, 4911, 4961;~~

~~(IV) Natural Gas Transmission, 4922;~~

~~(V) Natural Gas Transmission and Distribution, 4923; and~~

~~(VI) Petroleum Bulk Stations and Terminals, 5171.~~

~~(B) All remaining Part 70 sources identified in (b)(4)(A)(ii) of this Subsection shall be subject to the operating permit program and shall submit initial permit applications no later than March 5, 1997.~~

This language originally set up the schedule for existing facilities (in 1996) to submit applications for initial Title V operating permits when the Title V program was new. This language is no longer needed except for an ongoing requirement for any facility that slipped through unnoticed to abide by this requirement.

Sept 15

~~(C) No later than March 5, 1997, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:~~

- ~~(i) Metals, 3312, 3315, 3321, 3341, 3351, 3411, 3412, 3432, 3466,~~
- ~~(ii) Brick Plants, 3251, 3297,~~
- ~~(iii) Commercial Printing, 2752, 2761.~~

~~(D) No later than July 5, 1998, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:~~

- ~~(i) Refineries, 2911;~~
- ~~(ii) Cement Plants, 3241;~~
- ~~(iii) Chemical/Carbon, 2819, 2821, 2851, 2861, 2869, 2891, 2895, 2899, 2999, 3053, 3086, 3089;~~
- ~~(iv) Petroleum Transportation/Terminals/Storage, 4612, 4613;~~
- ~~(v) Food Products, 2013, 2074, 2095.~~

~~(E) All remaining Part 70 sources shall be subject to the operating permit program and shall submit initial permit applications no later than March 6, 1999.~~

~~(5) **Newly regulated sources.** A source that becomes subject to the Part 70 operating permit program at any time on or after March 6, 1996, shall file an administratively complete operating permit application in accordance with the following schedule.~~

~~(A) A new source shall file an administratively complete operating permit application within 180 days of commencement of operation.~~


~~(B) An existing source that becomes subject to the Part 70 operating permit program due to modification shall file an administratively complete operating permit application within 180 days of commencement of operation of the modification.~~

~~(C) An existing source that becomes subject to the Part 70 operating permit program without undergoing physical or operational changes resulting in an increase in the emission of any air pollutant subject to regulation shall file an administratively complete operating permit application by March 6, 1999 or within 12 months after the date the source first becomes subject to the Part 70 operating permit program, whichever is later.~~

The ongoing requirement for any facility that slipped through unnoticed to abide by this requirement – or for a facility that becomes newly subject and will need to obtain a Title V operating permit – is kept in place with this language.

July 22 with Sept 15
correction (added bold).

(c) **Enhanced NSR process.** An existing Part 70 source covered by an operating permit issued under this subchapter may be eligible to utilize the enhanced NSR process, including the public notice procedures of OAC 252:4-7-13(g)(4) for a construction permit for modification of the source.



Facilities with existing Title V permits are eligible for the enhanced NSR process.
(Facilities that do not already have Title V operating permits are not eligible.)

252:100-8-5. Permit applications

July 22

(d) Construction permit applications.

(1) An application for a construction permit shall provide data and information required by this Chapter and/or requested on the application form available from the DEQ pursuant to the requirements of this Chapter. Such data and information shall include but not be limited to site information, process description, emission data and when required, BACT, modeling and sampling point data as follows:

(A) **BACT determination.** To be approved for a construction permit, a major source must demonstrate that the control technology to be applied is the best that is available for each pollutant that would cause the source to be defined as a major source. This determination will be made on a case-by-case basis taking into account energy, environmental, and economic impacts and other costs of alternative control systems. Unless required under Part 7 of this Subchapter, a BACT determination is not required for a modification that will result in an increase of emissions of less than 100 tons per year of any regulated air pollutant.

(B) **Modeling.** Any air quality modeling or ambient impact evaluation that is required shall be prepared in accordance with procedures acceptable to the DEQ and accomplished by the applicant.

(C) **Sampling points.** If required by the DEQ an application shall show how the new source will be equipped with sampling ports, instrumentation to monitor and record emission data and other sampling and/or testing equipment.

(2) Construction permit applications for new sources must also include the requirements for operating permits contained in OAC 252:100-8-5(e) to the extent they are applicable.

(3) Construction permit applications for existing source modifications that are eligible for the enhanced NSR process under 252:100-8-4(c) must indicate in the application whether they intend to utilize:

(A) the enhanced NSR process, including the public notice procedures of OAC 252:4-7-13(g)(4) and the administrative amendment process for the ensuing operating permit modification, or

(B) the traditional NSR process.

In the application for a construction permit, a facility will be required to specify whether they are requesting enhanced or traditional NSR processing. This will clarify the public and EPA review requirements.

252:100-8-7.2. Administrative permit amendments and permit modifications

(a) Administrative permit amendments.

(1) An administrative permit amendment:

- (A) Corrects typographical errors;
- (B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
- (C) Requires more frequent monitoring or reporting by the permittee;
- (D) Allows for a change in ownership or operational control of a source where no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the DEQ;
- (E) Incorporates into ~~the~~ an existing Part 70 source operating permit the requirements from preconstruction review permits issued by the DEQ under this Part and the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4).

The enhanced NSR process allows the changes authorized by a construction permit to be incorporated into the Title V operating permit as an administrative amendment if the facility already has a Title V operating permit to be amended.

July 22 with formatting update Sept 15.

252:100-8-8. Permit review by EPA and affected states

(f) **Timelines for submission of EPA draft or proposed permit review copy to EPA.** ~~The For~~ the categories specified in (1), (2), and (3), below, the DEQ shall review public comments, revise the draft permit as appropriate and submit the proposed permit to EPA for review no later than 60 days before the issuance deadline established in OAC 252:4-7-31, except as provided in OAC 252:4-7-9 through 4-7-11, which stop the review timeline and provide additional time for permit review.

(1) Operating permit applications for Part 70 sources that are not currently covered by a Part 70 source operating permit.

(2) Applications to modify existing Part 70 operating permits where the associated construction permit application underwent the traditional NSR process or where a construction permit was not required, and

(3) Construction permit applications eligible to utilize the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4).

(g) **Notice of non-acceptance.** The DEQ shall notify the Administrator and any affected State in writing of any refusal by the DEQ to accept all recommendations for the proposed permit that the Administrator or the affected State submitted during the review period. The notice will include the DEQ's reasons for not accepting any such recommendation. The DEQ is not required to accept recommendations that are not based on applicable requirements of the Oklahoma Clean Air Act or 40 CFR Part 70, as applicable.

(h) **EPA Part 70 source operating permit review and non-objection.** Upon expiration of EPA's 45-day review period or receipt of notice from the EPA that it will not object to a proposed Part 70 source operating permit (or construction permit processed under the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4)), the DEQ shall issue the proposed permit as final unless an administrative permit hearing has been timely and properly requested. [See Tier III procedures under 27A O.S. §2-14-304]

This language clarifies the process that the DEQ will follow for submitting draft or proposed permits to EPA for review. Under traditional NSR, EPA will review the draft permit along with the public. Under enhanced NSR, the public will have a 30-day public review period and then EPA will have a 45-day review period. For Title V operating permits that incorporate changes authorized by a traditional NSR permit, there will be both 30-day public and 45-day EPA review periods.

This language cleans up and clarifies the DEQ issuance policy.

(i) **EPA Part 70 source operating permit review and objection.**

(1) **Timing.** No Part 70 source operating permit for which an application must be transmitted to the Administrator under subsection (a) of this Section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(2) **Form of objection.** An EPA objection shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections.

(3) **Additional grounds.** Failure of the DEQ to do any of the following also shall constitute grounds for an objection:

(A) Comply with subsections (d) or (e) of this Section;

(B) Submit any information necessary to review adequately the proposed permit; or

(C) Process the permit application according to the uniform permitting requirements of OAC 252:4-7 Part 1.

(4) **Copy.** The Administrator will provide the permit applicant a copy of the objection.

(5) **DEQ response.** The DEQ shall consult with EPA and the applicant and shall amend the permit and submit for approval an amended proposed permit to EPA within 90 days after the date of EPA's objection. If the Administrator objects to issuance of a Part 70 source operating permit modification associated with a construction permit initially processed under the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4), the Director may choose to notify the Administrator of DEQ's intent to complete the construction permit application review under the traditional NSR process while working to resolve EPA's objection.

(6) **Failure of DEQ to respond.** If the DEQ fails, within 90 days after the date of the EPA objection, to amend and resubmit the amended proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of EPA's Part 71 regulations.

The EPA objection language is specific to a Title V operating permit. EPA may object to a permit issued under the enhanced NSR process, but only with regard to issues associated with the Title V operating permit that will be later amended.

If EPA objects to a permit undergoing enhanced NSR review, DEQ may, at our discretion, issue the NSR permit independently and later address the objection when issuing the Title V operating permit.

(j) **Public petitions to the Administrator.** If the Administrator does not object in writing to issuance of a Part 70 source operating permit under subsection ~~(h)~~ (i) of this Section, any person that meets the requirements of this subsection may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that the petitioner raised with reasonable specificity during the public comment period provided for in 27A O.S. § 2-14-302.A.2., unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the DEQ shall not issue the Part 70 source operating permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the DEQ has issued a permit prior to receipt of an EPA objection under this subsection, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) except in unusual circumstances. If the DEQ revokes the permit, it may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

The petition process is only applicable to the issuance of the Title V operating permit. This language clarifies that distinction. (Other administrative remedies are available to entities choosing to contest the issuance of an NSR permit.)

Chapter 100 Changes

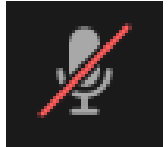
That concludes my presentation on our proposed changes to Chapter 100, Subchapters 1, 7, and 8.

Please note that staff is recommending that the Council adopt the proposed rule changes to both Chapter 4 and Chapter 100 during today's meeting.

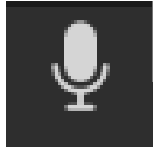
Thank you!

Questions & Discussion by the Council

- Please be sure to unmute yourself.



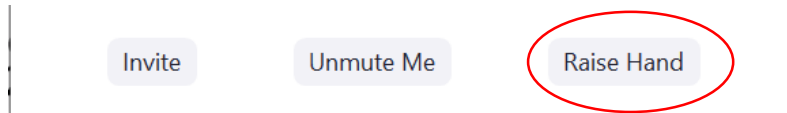
Muted



Unmuted

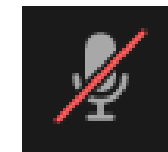
Public Questions & Comments

- If you wish to make a comment, click the “**Raise Hand**” feature on your device at the bottom of the Participants list (may show as “...”) or use ***9 on your phone** keypad.

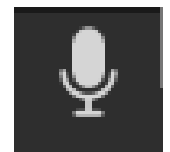


Keyboard shortcut PC: **Alt+Y** Mac: **Option+Y**

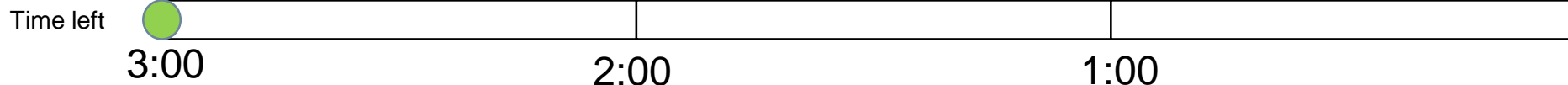
- If you do not have a microphone on your device or cannot use the Raise Hand feature, you will need to call 1-346-248-7799 Meeting ID: 865 9818 5495 Passcode: 751760.
- The host will identify you by name or the last four digits of your phone number when it is your turn to speak and then unmute your line.
- You may also have to unmute yourself using the microphone symbol or *6 on your phone keypad.
- Please state your name and affiliation for the record.
- You will have approximately 3 minutes to make a comment.



Muted

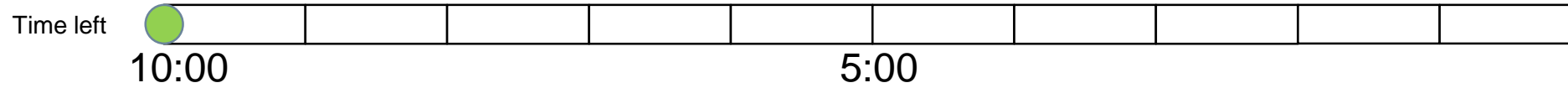


Unmuted



Discussion & Possible Action by the Council

10 Minute Break



4. **Division Director's Report** – Kendal Stegmann, Division Director
5. **New Business** - Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda.
6. **Adjournment** – The next regular meeting is scheduled for Wednesday, January 20, 2021, in Oklahoma City, Oklahoma.

Thank you!

- That concludes the Air Quality Advisory Council meeting.